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Supreme Court, U.S.
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In The

SUPREM COURT of the UNITED STATES

Raymond Bischoff — Petitioner

V.

Commonwealth of Kentucky, — Respondents
Louisville and Jefferson County Sewer District,
Zielke, Pedley, Gordinier, Dwyer, Clayton

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Sixth District

PETITION FOR WRIT OF CERTIORARI

Raymond Bischoff
5215 Bardstown Road
Louisville, Kentucky 40291
(502) 499-1323

QUESTIONS PRESENTED

1. Without Written Release from the property owner, then, how can the filed for, state granted and held Bench Trial, for a compensation matter of property over twenty dollars, be considered anything but irrefutable proof of violating a citizen's guaranteed right to Just Compensation and Jury Trial under U.S. Constitution Amendments V and VII ?

2. How can Just Compensation be satisfied, when agricultural products are taken or destroyed without recognition or compensation from the defendants, and fair market value is outrageously unjust and arbitrary under a bench trial ?

3. How can the Commonwealth of Kentucky Eminent Domain law be considered constitutional when it has no gatekeepers to guard against abusive use and no allowance for total loss of fair market value for property, as in Luca v. South Carolina Coastal Council, 505 U.SS. 1003 (1992) ?

4. Is Judicial Immunity the Scapegoat by which the Respondents, in their official capacities, justify failure to uphold the true essence of the laws and rights of citizens, putting the burden of time and expense upon the citizen to seek justice ?

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ORIGINAL COMPLAINT

JURISDICTION

Jurisdiction in this claim relies upon the U.S. Constitution Amendment V and VII to uphold the guaranteed rights of a citizen for Just Compensation and Jury Trial for a matter of property over twenty dollars. The citizen can not rely upon the defendants, all, when, in a matter of compensation, a bench trial was filed for and then held, without Written Release from this citizen Just Compensation can not be satisfied by a forced bench trial of an outrageously unjust and arbitrary decree, and destroyed or taken agricultural crops have not been recognized for compensation.

Commonwealth of Kentucky Eminent Domain law does not have a gatekeeper for abuse and no allowance for total loss of fair market value, therefore, 28 U.S.C. 2403(b) may apply and shall be served on its Attorney General.

The Order entered October 22, 2007, by the United States Court of Appeals, For the Sixth Circuit does not uphold the rights of this citizen's claim.

The Opinion and Order entered January 26, 2007, by the United States District Court, Western District of Kentucky at Louisville, does not uphold the rights of this citizen's claim.

Extension of time January 30, 2008, extended to February 19. 2008.

Extension of time February 19, 2008, extended to March 20, 2008, by Justice Stevens, application No. 07A628.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution Amendment V Just Compensation

U.S. Constitution Amendment VII all matters of property, twenty dollars or more, shall be decided by jury trial

STATEMENT OF THE CASE

This claim is based upon the actions of the Defendants, filing and then holding a forced bench trial for a compensation matter, without Written Release from this citizen, having cited both state and federal law mandates. This claim is not based upon the final decision of the Commonwealth of Kentucky Supreme Court, resting against, which overturned the Kentucky Court of Appeals.

Compensation was based upon a probate settlement price through an appraiser, not qualified for Fair Market Value, in the face of evidence clearly showing an outrageously unjust and arbitrary contradiction over a hundred times the difference. Destroyed or taken agricultural crops were not recognized nor compensated for. Total loss of fair market value was not recognized, due to a main sewer line installation prohibiting future new construction as defined by zoning laws.

Kentucky KRS 416.550-416.670 Eminent Domain law, mandates a jury trial for compensation matters. There is no allowance for total loss of fair market value due to a main sewer line, whereby no new construction can be developed, as in Lucas v. South Carolina Council, 505 U.S. 1003 (1992). Therefore, it is noted that 28 U.S.C. 1403(b) may apply.

This citizen can not rely upon the Defendants, all, to uphold the true essence of rights and law, nor their authority in official capacities to be responsible when cited both state and federal mandates.

REASONS FOR GRANTING THE WRIT

Petitioner relies upon this Highest Court to recognize the injustice of violations of Amendment V and VII in this compensation matter, and find outrageously unjust and outrageously arbitrary the posture of the Respondents, having cited both state and federal mandates .

The Commonwealth of Kentucky Eminent Domain law is not specific enough regarding compensation matters. Allowing a sewer company as a normal utility abuses true essence of that privilege, for a tota! loss of resale value for new construction is taken from the property by a main sewer line installation, just as zoning laws and common sense prohibit. This is sustained by Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), and therefore 28 U.S.C. 2403(b) may apply.

Without granting this Writ, citizens in all states may be open to the same violations from a precedence that would be created. The Respondents, in their official capacities, being irresponsible to the true essence of the law and rights of citizens, fail to uphold the law and abuse their authority, putting the burden upon the citizen to buy justice. This same obligation and responsibility should apply in all public matters.

The history of Carpet bagging by the Respondents' corroborations continues in this state with judges turning the cheek to complaints, twisting the law to justify the means of their actions.

CONCLUSION

This citizen honorably served in Viet Nam for the rights and privilege of guaranteed U.S. Constitution rights and property to be upheld and recognized in the true essence of the law. The whole concept of this matter lies upon the Respondents not serving the citizen honorably and responsibly, and not upholding rights and mandates of law.

Just Compensation can not be satisfied by a forced bench trial, without Written Release from the property owner. Main sewer lines take total fair market value for future construction. Commonly used appraisers are not experts for evaluation of fair market property values, when they are restricted by their methods and prone to be user friendly, in the face of real estate agents being the professionals that set fair market value standards. Agricultural crops can not be destroyed or taken without compensation.

The Respondents have no excuse for ignorance of the law in their official capacities and responsibilities, and their violation of a citizen's rights and property can only be construed as pre-meditated continuance of their Carpet bagging history in this state, without your intervention to protect citizens.

Petition for Writ of Certiorari to be granted
Respectfully submitted,
Raymond Bischoff
5215 Bardstown Road
Louisville, Kentucky 40291
(502) 499-1323
May 20, 2008

APPENDIX A

No. 07-5320

UNITED STATES COURT OF APPEALS
FOR THE SIXTH DISTRICT

RAYMOND BISCHOFF Plaintiff-Appellant

V.

LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, JOHN DWYER, DENISE CLAYTON, Judge
Defendants-Appellees

ORDER

Before MERRITT, ROGERS, and MCKEAGUE, Circuit Judges

Raymond Bischoff, proceeding pro se, appeals a district court order dismissing his civil rights action construed as filed under 42 U.S.C. 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

This case arises out of an eminent domain proceeding filed by the Louisville and Jefferson County Metropolitan Sewer District (MSD) to obtain permanent and temporary sewer easements across property owned by Bischoff. After a bench trial in the Jefferson County Circuit Court, a monetary judgment in the amount of $5,522.00 was entered in favor of Bischoff for the taking of his property. Prior to the bench trial, Bischoff belatedly moved for a jury trial, which the trial court denied as

untimely under Ky. R. Civ. P. 38. The issue of whether the trial court's denial of Bischoff's motion for a jury trial violated the Kentucky Constitution was decided in Bischoff's favor on appeal to the Kentucky Court of Appeals. See Bischoff v. Louisville & Jefferson County Metro Sewer Dist., No. 2004-C-002545-MR, 2005 WL3443059 (Ky. Ct. App. Dec. 16, 2005). The case is currently pending in the Kentucky Supreme Court on discretionary review.

Bischoff filed the instant lawsuit against MSD, MSD's counsel in connection with the eminent domain proceeding (John Dwyer), and the Jefferson County Circuit Court Judge who presided over the eminent domain proceedings (Judge Denise Clayton), alleging that the defendants denied "a jury trial for Raymond Bischoff, pro se, property owner, in the face of objection and reference to U.S. Constitution Amendment VII by motion." For relief, Bischoff requests "a jury trial" and "damages and punitive damages for violations of constitutional rights."

Upon motions be the defendants, the district court dismissed the complaint for lack of subject matter jurisdiction and also under the abstention doctrine because an appeal in the condemnation case was still pending. This timely appeal followed.

We review de novo a district court's dismissal for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). Beamon v. Brown, 125 F.3d 965, 967 (6th Cir. 1997). We also review de novo a district court's decision to abstain. See Berger v. Cuyahoga County Bar Ass'n, 983 F.2d 718, 721 (6th Cir. 1993).

Upon review, we conclude that the district court was correct in abstaining on the basis of the

doctrine announced in Younger v. Harris, 401 U.S. 37 (1971). The Younger doctrine is invoked when state proceedings are pending and principles of federalism dictate that the constitutional claims should be raised and decided in state court without interference of the federal courts. In Middlesex County Ethics Comm. V. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982), the Supreme Court articulated a three –part test for determining whether Younger abstention is appropriate. It held that abstention is appropriate if: 1) state proceedings are ongoing; 2) the state proceedings implicate important state interests; and 3) the state proceedings afford adequate opportunity to raise federal questions. Id.

The three-part test is met in this case. First, Bischoff has an eminent domain case that is apparently still pending in a Kentucky state court. Second, condemnation actions for a Kentucky public body are uniquely a state interest.. Finally, Bischoff has failed to show that the Kentucky courts cannot or will not provide an adequate opportunity to raise his constitutional claim. Indeed, the record reveals that Bischoff has been allowed to raise his constitutional issue in the state proceeding and has raised it in the Jefferson Circuit Court, the Kentucky Court of Appeals, and now the Kentucky Supreme Court, which is empowered to rule on his constitutional issue if it grants discretionary review to do so. Thus, abstention was proper.

Upon further review, we conclude that the district court was correct to dismiss Bischoff's complaint against Judge Clayton. As a state court judge, Judge Clayton is entitled to absolute judicial immunity from liability for damages related to her

judicial acts. Butz v. Economou, 438 U.S. 478, 511-14 (1978); Shelly v. Johnson, 849 F.2d 228, 229-30 (6th Cir. 1988). In addition, insofar as Bischoff seeks monetary damages from Judge Clayton he is barred by the doctrine of Will v. Mich. Dep't of State Police, 491 U.S. 58 (1989). In Will, the Supreme Court held that state officials who are sued in their official capacity for monetary damages are not considered "persons' subject to suit under 1983. It is the plaintiff's affirmative duty to plead the capacity in which he is suing the defendants. See Wells v. Brown, 891 F.2d 591, 593 (6th Cir. 1989). Because Bischoff did not specify the capacity in which he sued Judge Clayton, the complaint is construed as suing this defendant in her official capacity as an employee of the state and Bischoff's claim for monetary damages must fail. See id. At 593-94.

The district court was also correct to dismiss the complaint against the remaining defendants. To state a viable 1983 claim, a plaintiff must allege that: 1) he was deprived of a right, privilege, or immunity secured by the Federal Constitution or laws of the United States, and 2) the deprivation was caused by a person while acting under color of state law. See Flagg Bros. v. Brooks, 436 U.S. 149, 155-57 (1978). Bischoff did not sufficiently allege a deprivation of a federal right because the Seventh Amendment has not been extended to the states and thus does not guarantee a jury trial in state court. See Minneapolis & St. Louis R.R. Co. v. Bombolis, 241 U.S. 211, 217 (1916).

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:06CV-540-H

RAYMOND BISCHOFF PLAINTIFF
v.
LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT, et al.
DEFENDANTS

MEMORANDUM OPINION AND ORDER

This case arises out of an eminent domain proceeding filed by the Metropolitan Sewer District ("MSD") to obtain a permanent and temporary sewer easements across property owned by Plaintiff. After a trial in Judge Clayton's court and the entering of a monetary judgment in Plaintiff's favor for the taking of his property, Plaintiff appealed first to the Kentucky Court of Appeals and has now moved for discretionary review with the Kentucky Supreme Court. All the Defendants have asked that the case be dismissed.

In essence, Plaintiff is asking this federal court to take jurisdiction away from an ongoing proceeding in the Kentucky Supreme Court. This Court knows of no principle of law by which it could undertake to do such a thing in these circumstances. Eminent domain procedures are particularly a feature of state law and are well established. There is no reason the appellate courts of Kentucky cannot adequately consider Plaintiff's due process concerns. Concerns of policy, comity and jurisdiction will

prevent this Court from interfering in such an ongoing state law proceeding. It goes without saying that Judge Clayton retains complete immunity for her actions as a judge. In short, this Court agrees with all of the reasons and arguments set forth in the various motions for summary judgment submitted by Defendants. Plaintiff has not se forth any arguments and reply that suggest a reason for this Court interfering with the ongoing state court proceedings.

Plaintiff has also requested leave to amend his complaint adding various constitutional claims. These are not a lot different than the concerns he has raised already. Once again, Kentucky courts can consider constitutional claims as part of his state appeal. This Court cannot interfere with an ongoing state appeal in these circumstances.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Plaintiff's motion to amend his complaint is DENIED.

IT IS FURTHER ORDERED that the motions to dismiss of all Defendants are SUSTAINED and this case is DISMISSED WITH PREJUDICE in its entirety.

This is a final and appealable order.

January 26, 2007 John B. Heyburn II
Chief Judge, U.S. District Court

cc: Raymond Bischoff, Pro Se
Counsel of Record

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

RAYMOND BISCHOFF, Pro Se
Plaintiff

MSD METROPOLITAN SEWER DISTRICT
JOHNE DWYER, PEDLEY, ZIELKE, GORDINIER
JUDGE DENISE CLAYTON, JEFFERSON CIRCUIT COURT, COMMONWEALTH OF KENTUCKY
Defendants

COMPLAINT

U.S. Constitution Amendment VII guarantees jury trial in all matters of property twenty dollars or more
U.S. Constitution Amendment V guarantees just compensation/fair market value in said matters
Neither was complied with

Plaintiff
Raymond Bischoff
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Louisville, Ky. 40291
502 499-1323

Defendant
MSD Metropolitan Sever District
700 W. Liberty St
Louisville, Jefferson County, Kentucky 40202

John Dwyer, Pedley, Zielke, Gordinier
2000 Meidinger Tower
462 So. 4th St
Lou, Ky 40202

Commonwealth of Kentucky, Jefferson Circuit Court, Judge Denise Clayton
700 W. Jefferson St.
Lou. Ky 40202

On October 25, 2005, Jefferson County Circuit Court held trial for compensation to a condemnation case, MSD vs. Raymond Bischoff, Judge Denise Clayton presiding. John Dwyer, Zielke, Pedley, and Gordinier, MSD, Jefferson County Circuit Court and Judge Denise Clayton did not provide but deny provision of a jury trial for Raymond Bischoff, Pro Se, property owner, in the face of objection and reference to U.S. Constitution Amendment VII, by motion.

U.S. Constitution Amendment V calling for Just Compensation is moot point at this time, but, appraisers can not give fair market value, probate settlements are improper motive for unjust enrichment by MSD.

There was no written statement to relinquish the right to jury trial.

Prayers for relief:

A. provide a jury trial in order that a fair and unbiased hearing of the facts for just deliberation in this matter
B. Restitution for damages and punitive damages for violations of constitutional rights
C. Admonishment of attornies, Commonwealth of

Kentucky, and courts and judges

D. Clarification of right to condemnation, and provisions thereof, especially just compensation

Request for a jury trial 'yes'

I hereby certify under penalty that the above petition is true to the best of my information, knowledge, and belief.

24 , October, 2006

Raymond Bischoff